

ARTICLE ____. To see if the Town will vote to amend the General Bylaws of the Town, by adding the following:

Stormwater Management & Erosion Control Bylaw

1. Purpose and Objective

The United States Environmental Protection Agency has identified sedimentation and polluted stormwater runoff from land disturbance, land development and redevelopment activities as major sources of water pollution.

The purpose of this Bylaw is to prevent or diminish the impacts of sedimentation and polluted stormwater from land disturbance, land development and redevelopment activities by controlling runoff and preventing soil erosion and sedimentation from site construction and development. The bylaw is necessary to protect the Town of Andover water bodies and groundwater resources, to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town.

The objectives of this bylaw are to comply with State and Federal statutes and regulations relating to stormwater discharges, and to establish the Town of Andover's legal authority to ensure compliance with the provisions of this Bylaw through inspections, monitoring and enforcement by:

1. protecting water resources;
2. controlling the volume and rate of stormwater;
3. requiring practices to manage and treat stormwater runoff generated from new development and redevelopment;
4. protecting groundwater and surface water from degradation or depletion;
5. promoting infiltration and the recharge of groundwater;
6. preventing pollutants from entering the municipal and private storm drain system;
7. preventing flooding and erosion to abutting properties;
8. ensuring that soil erosion and sedimentation control measures and stormwater runoff management practices are incorporated into site planning and design process and are implemented and maintained;
9. ensuring adequate long-term operation and maintenance of stormwater best management practices;
10. requiring practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality;

2. Definitions

ABUTTER: The owner(s) of land adjacent to the land disturbance site.

AGRICULTURE: The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (M.G.L. c. 131 § 40) and its implementing regulations (310 CMR 10.00).

ALTERATION OF DRAINAGE CHARACTERISTICS: Any activity on an area of land that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include, but are not limited to: change from distributed runoff to confined, concentrated discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

APPLICANT: Shall be the owner of record of all of the land shown on any plan submitted for approval to the Planning Board in accordance with the Stormwater Management Bylaw and Regulations.

AUTHORIZED ENFORCEMENT AGENCY: The Town of Andover Planning Board, its employees or agents designated to enforce this Bylaw.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CERTIFICATE OF COMPLETION: A document issued by the Planning Board which confirms that all documents and final reports have been submitted and all work required by the terms of a Stormwater Management Permit has been satisfactorily completed in accordance with this Bylaw and its Regulations.

CONSTRUCTION AND WASTE MATERIALS: Excess or discarded building or construction site materials that may adversely impact water quality, including but not limited to concrete truck washout, chemicals, litter and sanitary waste.

CLEARING: Any activity that removes the vegetative surface cover and/or organic layer. Clearing activities generally include grubbing activity as defined below.

DESIGNATED AGENT: Any person or entity designated by the Planning Board and approved by the Town Manager to assist in the administration, implementation and enforcement of the Stormwater Management and Erosion Control Bylaw and Regulations.

DESIGN CRITERIA: Engineering design criteria as contained in the Stormwater Regulations authorized under this Bylaw.

DETENTION: The temporary storage of storm runoff.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISTURBANCE OF LAND: Any action, including clearing and grubbing, that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

ENVIRONMENTAL SITE MONITOR: A Professional Engineer or other trained professional selected by the Planning Board or its designee and retained by the Planning Board at the permit holder's expense to periodically inspect the work and report to the Planning Board.

EROSION: The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS: Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).

GRADING: Changing the level or shape of the ground surface.

GRUBBING: The act of clearing land surface by digging up roots and stumps.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that limits water infiltrating the underlying soil. Impervious surface includes without limitation: roads, paved parking lots, sidewalks, sports courts and rooftops. Impervious surface also includes soils, gravel driveways, and similar surfaces with a runoff coefficient (Rational Method) greater than 85.

LAND-DISTURBING ACTIVITY or LAND DISTURBANCE: Any activity, including clearing and grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

MASSACHUSETTS ENDANGERED SPECIES ACT: (M.G.L. c. 131A) and its implementing regulations at (321 CMR 10.00) which prohibit the "taking" of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act MGL c. 131 s. 40 and the Massachusetts Clean Waters Act MGL c. 21, ss. 23-56.

MASSACHUSETTS WETLANDS PROTECTION ACT: (M.G.L. c.131 s. 40) and its implementing regulations (310 CMR 10.00)

MUNICIPAL STORM DRAIN SYSTEM or MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Andover.

OPERATION AND MAINTENANCE PLAN: A plan developed by a Massachusetts licensed professional engineer (PE) describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

OUTFALL: The point at which stormwater flows out from a discernible, confined point source or concentrated conveyance into waters of the Commonwealth.

OUTSTANDING RESOURCE WATERS (ORWs): Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

OWNER: Shall be the owner of record of all the land shown on any plan submitted. The owner shall submit the title reference or references from the Essex County Registry of Deeds indicating the owner of record.

PAVEMENT: The surface of an area which consists of bituminous concrete, cement concrete, or paving bricks made of masonry or stone.

PAVING, OVERLAY: The placement of pavement on top of an existing impervious surface. The underlying impervious surface is sometimes milled (partially ground down in thickness) before the overlay is placed.

PAVING, RECLAMATION: A procedure whereby existing pavement is broken and pounded into small fragments.

PERMITTEE: The person who holds a Stormwater Management Permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the

Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

RECHARGE: Addition of stormwater runoff to the groundwater by natural or artificial means.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

RESPONSIBLE PARTIES: Owner(s), persons with financial responsibility, and persons with operational responsibility.

RETENTION: The holding of stormwater runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

SEDIMENTATION: The process or act of deposition of sediment.

SITE: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SLOPE: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

SOIL: Earth materials including duff, humic materials, sand, rock, silt, clay and gravel.

STABILIZATION: The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

STORMWATER: Stormwater runoff, snow melt runoff, surface water runoff and drainage.

STORMWATER MANAGEMENT PERMIT: A permit issued by the Planning Board pursuant to this By-Law.

STORMWATER MANAGEMENT PLAN AND NARRATIVE: A document containing narrative, drawings and details prepared by a Massachusetts licensed qualified professional engineer (PE) which includes structural and non-structural best management practices to manage and treat stormwater runoff generated from regulated development activity. A Stormwater Management

Plan also includes an Operation and Maintenance Plan describing the maintenance requirements for structural best management practices.

STRIP: Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

TSS: Total Suspended Solids. Material, including but not limited to trash, debris, soils, sediment and sand suspended in stormwater runoff.

VERNAL POOLS: Temporary bodies of fresh water which provide critical habitats for a number of vertebrate and invertebrate wildlife species.

WATERCOURSE: A natural or man-made channel through which water flows, including a river, brook, or stream.

WETLAND RESOURCE AREA: Areas specified in the Massachusetts Wetlands Protection Act M.G.L. c. 131, s.40 and Regulations promulgated thereunder and in the Town of Andover Wetland Protection By-law and Regulations.

WETLANDS: Wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent communities in inland waters; that portion of any bank which touches any inland water.

3. Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

4. Applicability

A. No person may undertake a construction activity that results in a land disturbance of 43,560 square feet or more without a Stormwater Management Permit from the Planning Board.

(1) Land Disturbances

Land disturbances of 43,560 square feet or more, including multiple separate activities which in aggregate disturb 43,560 square feet or more whether on one parcel or adjacent parcels held in common ownership shall require a Stormwater Management Permit.

(2) Paving and Impervious Material

An increase of new pavement or other impervious material, reclamation of existing pavement, or a combination of both totaling 43,560 square feet or more shall require a Stormwater Management Permit.

(3) The Town of Andover is not exempt from the provisions of this Bylaw.

B. Exempt Activities

The following activities are exempt from the requirements of this Bylaw:

- (1) Normal maintenance and improvement of Town owned public ways, appurtenances to the public ways, and private and public utilities.
- (2) Normal maintenance and improvement of land in agricultural use.
- (3) Repair of septic systems when required by the Board of Health or the Massachusetts Department of Environmental Protection for the protection of public health.
- (4) Normal maintenance of currently existing landscaping, gardens or lawn areas associated with an existing use.
- (5) Overlaying of existing impervious surface.
- (6) Areas of land that have had a Stormwater Management review and approval either through the Conservation Commission or Planning Board using Design Criteria that at a minimum complies with the latest edition of the Massachusetts Stormwater Management Policy or with Design Criteria as described in Town of Andover's Subdivision Rules and Regulations or with the Town of Andover Stormwater Management and Erosion Control Regulations, whichever is more stringent in the protection of the Town's resources.

5. Administration

- A. The Planning Board as the permit granting authority shall administer, implement, and enforce this bylaw. Any powers granted to or duties imposed upon the Planning Board in this bylaw may be delegated to designated agents upon a majority vote of the Planning Board. Should the Planning Board designate an agent, such agent shall be approved by the Town Manager.
- B. The Planning Board may adopt and periodically amend rules and regulations to effectuate the purposes of this Bylaw. Failure by the Board

to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Bylaw.

- (1) Adoption of and revisions to Regulations may only be made after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least fourteen (14) days before the hearing date.
- C. The Planning Board shall refer to the criteria and information, including specifications and standards, of the latest edition of the Massachusetts Stormwater Management Policy, or to the Design Criteria as described in the Town of Andover's Subdivision Rules and Regulations, or to the Town of Andover Stormwater Management and Erosion Control Regulations, whichever is more stringent in the protection of the Town's environmental and infrastructure resources, for execution of the provisions of this Bylaw.
- D. The Planning Board may waive strict compliance with any requirement of this Bylaw or the Regulations promulgated hereunder, where:
- (1) such action is allowed by federal, state or local statutes and/or regulations, and
 - (2) is in the public interest, and
 - (3) is not inconsistent with the purpose and intent of this Bylaw and its Regulations.

6. Permits & Procedures

Projects requiring a Stormwater Management Permit shall be subject to the Town of Andover Stormwater Management and Erosion Control Regulations promulgated under Section 5 of this bylaw in addition to the procedures as set forth below:

A. Application

- (1) An application package shall be filed with the Planning Board and other departments as specified in the Regulations.
- (2) The Planning Board shall review the application for completeness and compliance with this Bylaw and its Regulations.

B. Public Meetings

- (1) The Planning Board shall hold a public meeting on all applications for Stormwater Management Permits for the purpose of reviewing the application and accepting public input.

- (2) Notice of the public meeting shall be given by posting and by first class mailings to abutters and abutters to abutters within 300 feet of the property line of the project site at least seven (7) days prior to the meeting.
- (3) The Board shall make the application available for inspection by the public during business hours at the Planning Division.

C. Actions

The Planning Board may:

- (1) Approve the Application and issue a permit if it finds that the proposed plan meets the objectives and requirements of this Bylaw and its Regulations;
- (2) Approve the Application and issue a permit with conditions, modifications, or restrictions that the Board determines meet the objectives and requirements of this Bylaw and its Regulations;
- (3) Disapprove the application and deny a permit if the Planning Board finds that the applicant has submitted insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume
- (4) Disapprove the application and deny a permit if it finds that the proposed plan fails to meet the objectives and requirements of this Bylaw or its Regulations.

D. Time for Action by the Board

- (1) Within forty-five (45) days of the filing of an application for a Stormwater Management Permit, the Planning Board or its designated agent shall
 - i. evaluate the application to ensure that it is complete prior to distribution,
 - ii. distribute the complete application to boards and departments for technical review as specified in the Regulations, and
 - iii. arrange agenda time for a public meeting before the Planning Board.
- (2) Within 60 days of the filing of the application, an Interdepartmental Review shall be held.
 - i. Following the Interdepartmental review but prior to the Planning Board public meeting, the Town Engineer shall provide a written recommendation for action on the application. Such

recommendation shall itemize all instances where the applicant has failed to meet the specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy, or of the Design Criteria as described in the Town of Andover's Subdivision Rules and Regulations, or of the Town of Andover Stormwater Management and Erosion Control Regulations.

- (3) Within ninety (90) days of the filing of an application for a Stormwater Management Permit, the Planning Board shall hold a public meeting.
- (4) Once begun, the public meeting may not continue for more than sixty (60) days unless such time is extended by written agreement between the applicant and the Board to a date certain announced at the meeting.
- (5) The Planning Board shall take final action within twenty-one (21) days of the close of the public meeting discussion.

E. Failure to Act

- (1) Upon certification by the Town Clerk that the allowed time has passed without the Planning Board's action, failure to take such action shall be deemed to be approval of said application and a Stormwater Management Permit shall be issued.

F. Appeals of Action by the Planning Board

- (1) A written decision of the Planning Board shall be final when it is executed by the Planning Board or its chair or acting chair and filed in the Town Clerk's office. Further relief of a decision by the Planning Board made under this Bylaw shall be in the Superior Court or Land Court in accordance with the applicable law. The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.
- (2) No work shall commence until the applicable appeal period has passed with no appeal or if an appeal has been filed, the appeal has been finally resolved by adjudication or otherwise.

G. Permit Duration

- (1) All activity permitted by this Bylaw must be completed within one-year of permit issuance. Extensions of time can be granted by the Planning Board upon formal written request by the applicant. If one year passes without an extension being granted, the Board may revoke the permit.

H. Certificate of Completion

- (1) The Planning Board will issue a Certificate of Completion upon receipt and approval of final reports and documentation as specified in the Regulations.

- I. Public record

- (1) The following documents shall be recorded at the Essex Registry of Deeds at the applicant's expense and proof of recording provided to the Planning Division.
 - i. The Stormwater Management Permit
 - ii. The approved Operation and Maintenance Plan
 - iii. The Certificate of Completion

7. Persons Aggrieved

Any person aggrieved by a decision or action of a designated agent appointed by the Planning Board under Section 5A, including but not limited to matters regarding completeness of application, inspections, and compliance with technical design criteria may, within thirty (30) days of such decision or action, request a public meeting with the Planning Board. In such cases, following the decision of the Planning Board, the provisions of Section 6.F.1 shall apply.

8. Consultants

At the applicant's expense, the Planning Board may retain independent consultants as needed to advise the Board on any and all aspects of a specific project. Independent consultants may include but are not limited to Registered Professional Engineers and Environmental Site Monitors.

9. Fees

The Planning Board shall establish fees, subject to approval of the Board of Selectmen, to cover expenses connected with application review, mailings and monitoring permit compliance. The fees shall be sufficient to cover direct and indirect costs to the town of processing and reviewing the application. Provided that a revolving fund for such purpose is established by the town in accordance with the provisions of M.G.L. Chapter 44, Section 53E ½, the Planning Board is also authorized to collect fees from the applicant in amounts sufficient to pay a Registered Professional Engineer and such other professional consultants as the Planning Board requires to advise the Planning Board on any and all aspects of the project. The fees for such professional engineers and consultants shall be paid to the Town for deposit into the revolving fund.

10. Security

Before the start of land disturbance activity, the Planning Board may require the permittee to post acceptable security, to insure that the work will be completed in accordance with the permit. The form of the security shall be approved by the Planning Board and shall be in an amount deemed sufficient by the Planning Board. If the project is phased, the Planning Board may release part of the security as each phase is completed in compliance with the permit but may not be fully released until the Planning Board has issued a Certificate of Completion.

11. Enforcement

- A. The Planning Board or its designated agent shall enforce this Bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
- B. Entry: The Planning Board or its agents, shall have the authority, with prior approval from the property owner or pursuant to court process, to enter upon privately owned land for the purpose of performing their duties under this Bylaw.
- C. Orders: The Planning Board or its designated agent may issue a written order to enforce the provisions of this Bylaw or the Regulations thereunder, which may include:
 - (1) a requirement to cease and desist from the land-disturbing activity until there is compliance with the Bylaw or its Regulations;
 - (2) maintenance, installation or performance of additional erosion and sediment control measures;
 - (3) monitoring, analyses, and reporting;
 - (4) remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity;
 - (5) compliance with the Operation and Maintenance Plan.
- D. If the enforcing person determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.
- E. Criminal Penalty: Any person who violates any provision of this Bylaw, regulation, order or permit issued there under, shall be punished by a fine in an amount of \$ 300.00. Each day or part thereunder that such violation occurs or continues shall constitute a separate offense.

F. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Planning Board may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D, which has been adopted by the Town, in which case the Planning Board or designated agent shall be the enforcing person. The penalty for each violation shall be \$300.00 each day or part thereof that such violation occurs or continues shall constitute a separate offense.

12. Severability

If any provision, paragraph, sentence, or clause of this Bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.

or take any other action related thereto.